

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

TRACY JOHNSON

v.

**KROGER TEXAS, L.P. D/B/A KROGER
STORE #435**

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No. 4:22-cv-0355-P

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff Tracy Johnson (“Johnson” and/or “Plaintiff”) and pursuant to this Court’s Order of April 27, 2022 (Doc. 5) files this her First Amended Complaint against Kroger Texas, L.P., d/b/a Kroger Store #435 (“Defendant” or “Kroger”) and would respectfully show the Court the following:

**I.
NATURE OF THE CASE**

1. This is a negligence and/or premises liability action arising from an incident that occurred on April 19, 2020, when Plaintiff Tracy Johnson, an invitee of Defendant at the Kroger retail store located at 2475 Ascension Blvd., Arlington, TX, slipped and fell on a wet floor caused by a leaking beverage cooler and an ineffective effort to clean up the area by Kroger staff. Defendant had notice of the condition as its employees had already attempted to clean up the wet conditions. Despite this notice on the part of Kroger, no notice or warning was provided to customers such as Plaintiff, resulting in her fall and subsequent injuries.

**II.
PARTIES**

2. Tracy Johnson is an individual and resident of Tarrant County, Texas.

3. Defendant Kroger is a domestic for-profit limited partnership doing business in the State of Texas with a principal place of business located at 1014 Vine Street, Cincinnati, OH 45202. Defendant has entered an appearance care of its attorneys of record Peavler/Briscoe, 2215 Westgate Plaza, Grapevine, TX 76051.

III.
JURISDICTION AND VENUE

4. Defendant removed this action based on diversity jurisdiction. Assuming, for the sake of argument that Defendant's citizenship allegations are correct, then the parties are diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

5. Further, this Court has jurisdiction over Kroger because the Defendant transacts business in the State of Texas and purposefully availed themselves of the privileges and benefits of conducting business in Texas, including the ownership and operation of a physical retail grocery store located at 2475 Ascension Blvd., Arlington, TX 76006, and Plaintiff's causes of action arise out of these Defendants' business activities in the State of Texas. Therefore, the Court possesses subject matter jurisdiction for the causes of action and claims for relief stated herein.

6. Venue is proper in this District under 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

IV.
BACKGROUND FACTS

7. On or about April 19, 2020, Ms. Johnson was an invitee of Defendant at the Kroger retail store located at 2475 Ascension Blvd., Arlington, TX and was shopping with her boyfriend. There was a leaking beverage cooler and employees had just been cleaning it. The employees did not do a thorough job, nor did they put any signs up of the slippery floor. Ms. Johnson slipped and violently fell. After Ms. Johnson fall, employees acknowledged they had been cleaning up and

should have put signs up. Kroger's employees admitted that they had actual knowledge that the floors in the area were wet and did not take any reasonable or prudent measures to prevent their customers from harm. There were no signs, cones or other warnings regarding the dangerous condition that existed on the floor. Ms. Johnson was transported by ambulance to JPS Hospital ER.

8. As a result of the fall, Ms. Johnson has sustained severe injuries to her lower back and lumbar spine, thoracic spine, neck, S.I. joint, left hip, left shoulder, left ankle, left wrist and left knee. She has incurred significant damages directly as a result of the Defendants' negligent acts or omissions, and her quality of life has been severely impacted.

V.

CAUSES OF ACTION - NEGLIGENCE AND NEGLIGENT HIRING, TRAINING AND/OR SUPERVISION

9. Defendant had a duty to exercise ordinary care and to act as a reasonable and prudent property owner, operator and/or management company.

10. Defendant is negligent and breached their duty of care in the following ways:

- a. Creating a dangerous condition;
- b. Failing to maintain the premises in a reasonably safe condition;
- c. Failing to remedy the unsafe and dangerous condition, which Defendant knew, or in the exercise of ordinary care should have known about, to exist on premises in areas which Defendant knew that persons such as Plaintiff are likely to encounter without warning and that constitute a hazard and risk of personal injury;
- d. Failing to warn Plaintiff of the condition on the premises which pose an unreasonable risk of harm to individuals such as Plaintiff;
- e. Creating a dangerous condition;
- f. In choosing not to make safe a condition on the premises which Defendant knew, or in the exercise of ordinary care should have known, poses an unreasonable risk of harm to individuals such as Plaintiff; and

- g. In choosing not to timely and properly remedy the condition so as to prevent harm or injury to others such as Plaintiff.

11. Defendant is also negligent in hiring, supervising, training and retaining its employees who failed to clean the dangerous condition or fail to warn Plaintiff of the dangerous condition.

12. As a proximate result of all of the above, Plaintiff suffered injuries for which he now brings suit.

VI.

CAUSES OF ACTION – PREMISE LIABILITY

13. At all times material hereto, Plaintiff was an invitee on the premises of 2475 Ascension Boulevard, Arlington, Texas 76006.

14. Defendant owned, operated, maintained, possessed and/or controlled the premises in question.

15. A condition on the premises constituted an unreasonably dangerous condition.

16. Defendant, in the exercise of reasonable care, knew or should have known of the unreasonably dangerous condition.

17. Defendant had a duty to use ordinary care to ensure that the premises did not present a danger to Plaintiff. This duty includes the duty to inspect and the duty to warn or to cure. Defendant breached this duty by failing to timely clean the floor and remedy the unsafe condition on the premises or to warn Plaintiff of the hazard that existed on the premises.

18. As a proximate result of all of the above, Plaintiff suffered injuries for which he now brings suit.

VII.
JURY DEMAND

19. Plaintiff previously tendered a jury demand with the State District Court prior to the Defendant's removal of this action to this Court. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff reiterates this demand for a trial by jury as guaranteed by the Seventh Amendment to the Constitution of the United States of America.

VIII.
DAMAGES

20. Plaintiff respectfully requests that the trier of fact determine the amount of his damages and losses that he has incurred in the past and will reasonably incur in the future, as well as the monetary value of these damages, which include, but are not limited to:

- a. Physical pain and suffering in the past and future;
- b. Disfigurement in the past and future;
- c. Physical impairment in the past and future;
- d. Medical care expenses in the past and future;
- e. Out-of-pocket economic losses;
- f. Loss of enjoyment of life; and
- g. Mental anguish in the past and future.

IX.
PRAYER

WHEREFORE, Plaintiff Tracy Johnson respectfully prays that Defendant Kroger be cited to appear and answer herein, and that upon final hearing of the cause, judgment be entered for the Plaintiff and against Defendant for damages over \$1 million; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-

judgment interest at the legal rate, costs of court; and such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

JOHNSON REIST PLLC

By: /s/ Wesley Johnson

WESLEY G. JOHNSON

State Bar No. 24041204

wjohnson@johnsonreist.com

JANA S. REIST

State Bar No. 24056890

jreist@johnsonreist.com

1312 14th Street, Suite 202

Plano, Texas 75074

Telephone: 469.501.2559

Facsimile: 469.501.7471

AND

THE LAW OFFICE OF MULLEN & MULLEN

SHANE MULLEN

State Bar No. 24037152

shane@mullenandmullen.com

1825 Market Center Blvd. #200

Dallas, TX 75207

(214) 747-5240 - Telephone

(214) 761-9146 - Facsimile

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2022, a true and correct copy of the above and foregoing has been served on the attorneys of record by ECF pursuant to the Federal Rules of Civil Procedure.

/s/Wesley Johnson
WESLEY G. JOHNSON